HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL No.227 of 2004

Between:

District Collector, Srikakulam & others. …Appellants.

AND

Chaduvula Jagadamba & another. …Respondents.

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:: JUDGMENT ::

Counsel for the Appellants : Government Pleader for

Assignment

Counsel for the Respondents : Sri D.V.Sitharam Murthy

14th FEBRUARY 2006

Per G.S.Singhvi, C.J.

This appeal is directed against order dated 19-11-2002 passed by the learned Single Judge in Writ Petition No.12369 of 1996, whereby he directed the respondents in the writ petition to consider the case of the writ petitioners for regularisation of land admeasuring Ac.2.45 cents comprised in Sy.No.522/2 of Raghunadhapuram village, Tekkali Mandal, Srikakulam District.

Sri Atla Suryanarayana, father of the writ petitioners is said to have been granted

assignment in respect of the land in question vide Proceedings Rc.No.2119/71, dated 18-5-1971. He is said to have given 0.30 cents of land by way of donation for construction of police station. Another parcel of land measuring 0.06 cents is said to have been sold to third parties.

By an order dated 19-1-1996, the competent authority resumed the land assigned to late Sri Atla Suryanarayana apparently on the ground of violation of the conditions of assignment.

The petitioners did not challenge order dated 19-1-1996, but filed writ petition for issuance of a writ of prohibition restraining the respondents from resuming the land in question.

In the counter affidavit filed on behalf of the respondents, it was specifically pleaded that the land had been resumed vide order dated 19-1-1996.

After filing of the counter by the respondents, the petitioners could have sought leave of the Court for amendment of the writ petition for the purpose of challenging order dated 19-1-1996, but they did not adopt that course. Notwithstanding this, the learned Single Judge disposed of the writ petition and directed the non-petitioners (appellants herein) to consider the case of the writ petitioners for regularization of their possession over the land in question.

Learned Government Pleader for Assignment argued that the order of the learned Single Judge is liable to be set aside because in the absence of any challenge to order dated 19.1.1996 vide which the land was resumed, the respondents cannot have any right over the same. She further submitted that order dated 19-1-1996 is appealable and the writ petitioners could have challenged the same by filing appeal before the competent authority.

Learned counsel for the respondents fairly conceded that order dated 19.1.1996 passed by the competent authority for resuming the land in question was not challenged in the writ petition. He submitted that the Bench may remand the case to the learned Single Judge with liberty to his clients to challenge order dated 19.1.1996.

We have thoughtfully considered the respective submissions. In our opinion, at this stage, it is not necessary to consider and adjudicate on the objection raised by the learned Government Pleader for Assignment to the maintainability of the writ

petition on the ground that the writ petitioners could have challenged order dated 19.1.1996 by filing appeal because we feel that ends of justice would be met by setting aside the order under challenge and remanding the writ petition to the Single Bench for fresh adjudication with leave to the petitioners to apply for amendment for the purpose of incorporating a prayer for quashing order dated 19-1-1996.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and Writ Petition No.12369 of 1996 is remitted for fresh adjudication. The writ petitioners shall be free to apply for amendment of the writ petition and make a prayer for quashing order dated 19-1-1996. The respondents shall also be free to raise an objection to the very maintainability of the writ petition on the ground that the petitioners have an effective alternative remedy of appeal.

While remanding the case to the Single Bench for fresh adjudication of the writ petition, we direct the parties to maintain status quo in respect of the land in dispute. This would necessarily mean that if the writ petitioners are in possession of the assigned land or a part thereof, then their possession would not be disturbed. If, on the other hand, the possession of the land has already been taken by the Revenue authorities, then the writ petitioners shall not be entitled to use this order for the purpose of regaining possession.

G.S. SINGHVI, C.J.

14th February, 2006.

G.BHAVANI PRASAD, J.

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